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4 IN THE DISTRICT COURT OF GUAM
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6 SEDFREY M. LINSANGAN,

7 Plaintiff,

8 vs.

9 UNITED STATES OF AMERICA,

10 Defendant.
11

CIVIL CASE NO. 19-00145

12 **REPORT & RECOMMENDATION**
13 to Deny Motion for Preliminary Injunction
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17 This matter is before the court on the Plaintiff's Motion for Preliminary Injunction, *see* ECF
18 No. 2, which was automatically referred to the below-signed Magistrate Judge pursuant to General
19 Order re 17-0002. The Plaintiff requests that the court enjoin the United States from enforcing the
20 ban against cockfighting and argues that portions of the Agriculture Improvement Act of 2018
21 prohibiting cockfighting in Guam and other U.S. territories are unconstitutional.

22 On December 17, 2019, the court heard argument on the motion. *See* Minutes, ECF No. 14.
23 Having reviewed all pertinent pleadings filed herein and relevant case law, as well as having heard
24 argument from the parties, the court hereby issues this Report and Recommendation to deny the
25 Plaintiff's Motion for Preliminary Injunction.
26

27 **BACKGROUND**

28 At issue before the court is Section 12616 of the Agriculture Improve Act of 2018, signed into
law by the President on December 20, 2018. *See* Pub. L. 115-334, 132 Stat. 4490 (2018). Section
12616 amended the Animal Welfare Act, 7 U.S.C. §§ 2131-2159, and essentially prohibits
cockfighting in every U.S. jurisdiction, including Guam and the U.S. territories as of December 20,
2019.

The Plaintiff claims that he has been "involve[d] in gamefowl raising and competition for 40
years." Compl. at ¶7, ECF No. 1. He asserts that cockfighting "is not only part of his culture,

1 custom and tradition but also a hobby, pastime, exercise and sport.” *Id.*

2 The Plaintiff filed his Complaint on November 7, 2019, asserting that passage of the new law
3 “violat[es] the Bill of Rights and Constitutional rights of the People of Guam as contained in . . .
4 [the] Organic Act of Guam.” *Id.* at ¶1. The Plaintiff seeks judgment declaring that the ban on
5 gamefowl fighting in Guam is unlawful and unconstitutional and asks the court to enjoin the United
6 States from enforcing said law.

7 The Plaintiff also filed the instant Motion for Preliminary Injunction on the same day. *See*
8 Pl.’s Mot. Prelim. Inj., ECF No. 2. On November 13, 2019, the Plaintiff filed his “Supporting
9 Arguments for Motion for Preliminary Injunction. *See* ECF No. 7.

10 On November 29, 2019, the United States filed it’s Opposition. *See* ECF No. 10.

11 On December 12, 2019, the Plaintiff filed a “Relevant Pleading to the Court to Issue
12 Injunction before December 20, 2019.” *See* ECF No. 12.

13 PRELIMINARY INJUNCTION LEGAL STANDARDS

14 The Plaintiff requests that the court issue a preliminary injunction. “A preliminary injunction
15 is an ‘extraordinary and drastic remedy’ . . . ; it is never awarded as of right.” *Munaf v. Geren*, 553
16 U.S. 674, 689-90 (2008) (internal citation omitted). “An injunction is a matter of equitable
17 discretion” and is “an extraordinary remedy that may only be awarded upon a clear showing that the
18 plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). “A
19 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits,
20 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
21 equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. “When the
22 government is a party, these last two factors merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009);
23 *Drakes Bay Oyster Co. V. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

24 ANALYSIS

25 The court will next address the *Winter* preliminary injunction factors.

26 1. Likelihood of Success on the Merits

27 The first *Winter* factor is whether the Plaintiff is likely to succeed on the merits of this case.
28 The Plaintiff argues that he is likely to succeed on the merits of his claims that the enactment of the

1 new law violates the Organic Act of Guam and the U.S. Constitution. First, the Plaintiff asserts that
2 Section 12616 violates the Organic Act, particularly subsections (e), (n) and (u) of Section 1421b,
3 Title 48 United States Code. Section 1421b is the "Bill of rights" provision of Guam's Organic Act.
4 The specific subsections cited by the Plaintiff provide:

5 (e) No person shall be deprived of life, liberty, or property without due process of law.

6 (n) No discrimination shall be made in Guam against any person on account of race,
7 language, or religion, nor shall the equal protection of the laws be denied.

8 (u) The following provisions of and amendments to the Constitution of the United
9 States are hereby extended to Guam to the extent that they have not been previously
10 extended to that territory and shall have the same force and effect there as in the United
11 States or in any State of the United States: article I, section 9, clauses 2 and 3; article
12 IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the
13 thirteenth amendment; the second sentence of section 1 of the fourteenth amendment;
14 and the fifteenth and nineteenth amendments.

15 48 U.S.C. § 1421b(e), (n) and (u).

16 The Plaintiff has failed to show how the passage of Section 12616 deprives him of "life,
17 liberty, or property without due process of law." The Plaintiff has not cited any authority to support
18 his claim that he has a liberty interest in continuing to participate in gamefowl fighting.
19 Additionally, although there are criminal consequences and penalties attached with a violation of the
20 cockfighting ban, an individual so prosecuted will not be denied due process of law since said
21 individual will be afforded all the protections attendant with a criminal trial.

22 Similarly, the Plaintiff has not shown how Congress's enactment of the cockfighting ban
23 discriminates against him or any person on account of his race, language or religion. If anything,
24 enactment of Section 12616 has the opposite affect since it applies uniformly throughout the 50
25 states and territories. His mere conclusory assertions that the ban violates subsection 1421b(n) is
26 insufficient to establish a likelihood of success on the merits.

27 Additionally, the Plaintiff has also not established a violation of subsection 1421b(u) of the
28 Organic Act. At the hearing on this matter, the Plaintiff argued that Section 12616 violates the Ninth
Amendment as made applicable to Guam in subsection 1421b(u) of the Organic Act. The court,
however, finds no merit in this argument. The Ninth Amendment to the U.S. Constitution provides:
"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage

1 others retained by the people.” U.S. Const. amend. IX. This amendment “has not been interpreted
2 as independently securing any constitutional rights for purposes of making out a constitutional
3 violation.” *Schowengerdt v. United States*, 944 F.2d 483, 490 (9th Cir.1991). “It is a common error,
4 but an error nonetheless, to talk of ‘ninth amendment rights.’ The ninth amendment is not a source
5 of rights as such; it is simply a rule about how to read the Constitution.” *San Diego County Gun*
6 *Rights Comm. v. Reno*, 98 F.3d 1121, 1125 (9th Cir. 1996) (quotation omitted). Additionally, the
7 Ninth Amendment does not encompass an unenumerated, fundamental, individual right to
8 cockfighting. Despite the Plaintiff’s assertion that cockfighting is an “inalienable right,” he fails to
9 provide authority to support such a contention.

10 Furthermore, the Plaintiff argues that Congress violated the Fourteenth Amendment. The
11 provision of said amendment made applicable to Guam under subsection 1421b(u) provides: “No
12 State shall make or enforce any law which shall abridge the privileges or immunities of citizens of
13 the United States; no shall any State deprive any person of life, liberty, or property, without due
14 process of law nor deny to any person within its jurisdiction the equal protection of the laws.” U.S.
15 Const. amend. XIV, §1 (emphasis added). The court finds this provision of the Fourteenth
16 Amendment inapplicable here because Congress passed the law at issue here, not one of the states.

17 Finally, the Plaintiff asserts that Section 12616 violates several other Constitutional rights.
18 He contends that cockfighting should be considered a fundamental “cultural right.” He also argues
19 that enactment of the law violated his procedural due process rights since the people of Guam have
20 no real political representation in the legislative and executive branches of the federal government
21 and thus the proponents of cockfighting, including himself, have had no meaningful opportunity to
22 be heard prior to the enactment of Section 12616.

23 Similar arguments were raised by the plaintiffs in *Club Gallistico de Puerto Rico Inc. v.*
24 *United States*, No. CV 19-1481 (GAG), 2019 WL 5566322, at *12 (D.P.R. Oct. 28, 2019), and
25 rejected by the court. With regard to the plaintiffs’ assertion that cockfighting be classified as a
26 fundamental “cultural right,” Judge Gelpi rightfully stated that “[n]o such right exists in our Federal
27 Constitution and the Supreme Court has consistently rejected any expansion of the Bill of Rights.”
28 *Id.* at *11 (citing *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). He further stated that

1 “despite the undemocratic predicament existing in the Commonwealth of Puerto Rico, the utter lack
2 of consent of the governed per se does not violate the Constitution.” *Id.* at *12 (citing *United States*
3 *v. Pedro-Vidal*, 371 F. Supp.3d 57, 59 (D.P.R. 2019)).

4 The court finds Judge Gelpi’s decision in *Club Gallistico* to be thorough and well-reasoned.
5 The court sympathizes with the argument that the people of Guam have been disenfranchised in their
6 ability to elect federal lawmakers in the executive and legislative branches and to otherwise
7 meaningfully participate through elected officials in the process of enacting federal laws that apply
8 to the island, but the remedy for such disenfranchisement lies within the political, not *judicial*,
9 process. This court is constrained by the Supremacy Clause and other provisions of the Constitution,
10 specifically the Commerce Clause and the Territorial Clause, which give Congress the authority to
11 enact laws such as Section 12616 that apply to all citizens of the U.S. territories. Although the
12 Plaintiff notes that Oklahoma’s residents were permitted to decide through the initiative process
13 whether to ban cockfighting in their state, this argument is irrelevant to the fact that Congress has
14 broad legislative authority over the territories. *See Guam v. Guerrero*, 290 F.3d 1210, 1221 (9th Cir.
15 2002) (“Congress’s plenary authority over the territories, probably derived from the Territorial
16 Clause. U.S. Const., art. IV, §3, has long been settled.”). The Plaintiff has not presented any
17 authority showing that Congress has exceeded its constitutional bounds in enacting Section 12616.
18 Despite the Plaintiff’s arguments, the court finds that the Plaintiff is unlikely to succeed on the merits
19 with respect to the claims in his lawsuit that the cockfighting ban is unconstitutional and inorganic.

20 When a plaintiff fails to show a likelihood of success on the merits, the court need not
21 consider the remaining three *Winter* factors. *Ass’n des Eleveurs de Canards et d’Oies du Quebec*
22 *v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013) (quoting *DISH Network Corp. V. F.C.C.*, 653 F.3d 771,
23 776-77 (9th Cir. 2011)). Although the court has found that the Plaintiff has not satisfied this
24 threshold requirement, the court will nonetheless analyze the remaining three factors.

25 2. Irreparable Harm in the Absence of Preliminary Relief

26 Next, the court considers whether the Plaintiffs will suffer irreparable harm if the court denies
27 preliminary relief.

28 A plaintiff seeking preliminary injunctive relief must “demonstrate that irreparable injury is

1 *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). The mere
2 possibility of irreparable harm is insufficient. *Id.* (finding the Ninth Circuit’s standard of a
3 “possibility” of harm too lenient). “To seek injunctive relief, a plaintiff must show that he is under
4 threat of suffering ‘injury in fact’ that is concrete and particularized; the threat must be actual and
5 imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the
6 defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury.”
7 *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

8 Here, the Plaintiff asserts that he will suffer irreparable harm if a preliminary injunction does
9 not issue. His Motion for Preliminary Injunction describes the injuries as follows:

10 Plaintiff and people of Guam engage[d] in this culture . . . will be incurring
11 psychological injuries such as mental anguish, depression adjustment disorder, anxiety,
12 feeling of helplessness, etc. due to the ban that trample[s] our rights. Vendors, cockpit
operator, business[men] involve[d] in selling feeds, [and] bet caller[s] will lose their
business and jobs.

13 Pl.’s Mot. Prelim. Inc. at ¶3, ECF No. 2.

14 While the Plaintiff and cockfighting proponents will certainly be impacted economically by
15 the upcoming ban on the activity, it is well established that mere economic injury does not constitute
16 irreparable harm. *See Sampson v. Murray*, 415 U.S. 61, 90 (1974) (“[T]he temporary loss of income,
17 ultimately to be recovered, does not usually constitute irreparable injury. . . . Mere injuries, however
18 substantial, in terms of money, time and energy necessarily expended . . . are not enough. The
19 possibility that adequate compensatory or other corrective relief will be available at a later date, in
20 the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”) (internal
21 citations omitted); *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d
22 597, 603 (9th Cir.1991) (“[E]conomic injury alone does not support a finding of irreparable harm,
23 because such injury can be remedied by a damage award.”). Accordingly, as to the second *Winter*
24 factor, the court finds that the Plaintiff has not met his burden of demonstrating that irreparable
25 injury is likely if a preliminary injunction is not issued.

26 3. Balance of Equities and Public Interest

27 Finally, the Plaintiff asserts that the balance of equities and the public interest weigh in their
28 favor. The Plaintiff contends that enforcing the cockfighting ban will “lead to underground

gamefowl fighting resulting [in] loss of revenue” and will “ruin people[‘s] lives once they are caught because it is a felony and they have to serve time in prison.” Pl.’s Mot. Prelim, Inc. at ¶5, ECF No. 2. He also claims that it will be difficult for the government to enforce the ban. *Id.* The Plaintiff also argues that an “[i]njunction will not injure others.” *Id.* at ¶6.

The Defendant, on the other hand, asserts that “[t]he need for blood-sport entertainment and income derived from this . . . activity has to be weighed against the desire by Congress to prevent the perpetuation of combat exhibit using live-animals, and . . . the desire to make the prohibition uniformly consistent through the United States and its Territories.” Def.’s Opp’n at 5, ECF No. 10. The Defendant also notes that “the government suffers irreparable institutional injury whenever its laws are set aside by a court.” *Id.* (citing *Maryland v. King*, 567 U.S. 1301, ___, 133 S. Ct. 1, 3 (2012)). Having considered the parties’ arguments, the court finds that the balance of equities and the public interest weighs in the Defendant’s favor.

CONCLUSION

Based on the above analysis, the court finds that the Plaintiff has failed to demonstrate that he is likely to succeed on the merits of his claims. Additionally, the court finds that the Plaintiff is not likely to suffer irreparable harm if the preliminary injunction is not granted. Furthermore, the court finds that the balance of equities and the public interest weigh in the Defendant’s favor. Accordingly, the court recommends the Chief Judge deny the Plaintiff’s Motion for Preliminary Injunction.

IT IS SO RECOMMENDED.



/s/ Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge
Dated: Dec 19, 2019

NOTICE

Failure to file written objections to this Report and Recommendation within fourteen (14) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).